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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S  
OPPOSITION TO PLAINTIFF ASHLEY  
GJOVIK'S "EMERGENCY  
ADMINISTRATIVE MOTION" (DKT.  
115)**

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Apple submits this response to Plaintiff Ashley Gjovik’s October 22, 2024 “Emergency Administrative Motion” (Dkt. 115) seeking to relieve her of her obligation to file a Fifth Amended Complaint (“5AC”) by the October 29, 2024 deadline set by the Court on October 1, 2024. The Court should deny the motion in its entirety. Plaintiff’s effort to delay and further prolong resolution of this case, that has not yet advanced past the pleadings in the 13 months since Plaintiff first filed, should be rejected, so that the case can proceed forward.

On October 1, 2024, the Court ordered Plaintiff to file her 5AC within 28 days. In an effort to delay her obligation to comply with this Court’s order, she filed a meritless appeal to the Ninth Circuit and now asks this Court to relieve her of her obligation to timely file her 5AC. Plaintiff has failed to demonstrate “good cause” for her request to extend time to file her 5AC, and she has also failed to show any “substantial harm or prejudice” that would occur if the Court denied her extension request. Further, Plaintiff has failed to provide any valid justification for her alternative request to permit her to file a 200-page 5AC, particularly in light of the Court’s repeated rulings that her prior complaints were excessive in length and failed to comply with Rule 8 of the Federal Rules of Civil Procedure. *See, e.g.*, Dkt. 46 at 2-3.

#### **I. RELEVANT PROCEDURAL HISTORY**

On October 1, 2024, the Court granted in part and denied in part Apple’s motion to dismiss the Fourth Amended Complaint and required Plaintiff to file a 5AC (subject to strict parameters regarding what amendments would be permitted) by October 29, 2024. *See* Dkt. 112 (the “October 1 Order”). That same day, Plaintiff filed a notice of appeal of the October 1 Order to the United States Court of Appeals for the Ninth Circuit (*see* Dkt. 113), notwithstanding that the October 1 Order is not a “final decision[ ] of the district courts” and thus the appellate court lacks jurisdiction under 28 U.S.C. § 1291.

On October 22, 2024—one week before the deadline to file the 5AC—Plaintiff filed a motion to stay all proceedings in this Court pending her (improper) appeal. *See* Dkt. 117 (the “Motion to Stay”). Separately, Plaintiff also filed an “emergency” motion to (a) change the deadline to file her 5AC to “at least two weeks, ideally 30 days, following a decision on the Motion to Stay” if the Court denies the Motion to Stay, or (b) stay the deadline if the Court grants the Motion to

1 Stay. *See* Dkt. 115 at 3 (the “Motion to Change Time”). Alternatively, she requested in the same  
 2 filing that, to the extent the Court denies her Motion to Change Time, the Court allow her to exceed  
 3 the 75-page limitation for the 5AC set by the Court in the October 1 Order and permit her to file a  
 4 200-page 5AC on the current deadline of October 29, 2024. *See id.* (“Motion to Exceed Page  
 5 Limitation”).

## 6 **II. ARGUMENT**

7 The Motion to Change Time should be denied because Plaintiff fails to set forth “good  
 8 cause” for the requested deadline change, as is required by Fed. R. Civ. P. 6(b)(1)(A), and also fails  
 9 to identify any “substantial harm or prejudice” that would occur if the Court did not change the  
 10 time, as is required by Civ. L.R. 6-3. **First**, Plaintiff insists that the deadline for the 5AC should be  
 11 changed “as a matter of judicial economy” because she appealed the October 1 Order to the Ninth  
 12 Circuit. Dkt. 115 at 2-3. But the October 1 Order is a *non-final* order granting partial dismissal of  
 13 some her claims, and thus the Ninth Circuit lacks jurisdiction over Plaintiff’s premature appeal.<sup>1</sup>  
 14 As such, this Court should disregard her notice of appeal and deny her request to extend the deadline  
 15 to file her 5AC. *Ruby v. Sec’y of U. S. Navy*, 365 F.2d 385, 389 (9th Cir. 1966) (“Where the  
 16 deficiency in a notice of appeal, by ... reference to a non-appealable order, is clear to the district  
 17 court, it may disregard the purported notice of appeal and proceed with the case, knowing that it  
 18 has not been deprived of jurisdiction.”); *Currier v. JP Morgan Chase Bank, NA*, No. 20CV227-  
 19 LAB (JLB), 2020 WL 1433282, at \*1 (S.D. Cal. Mar. 23, 2020) (“The Court concludes that  
 20 [plaintiff’s] notice of appeal from its non-final, non-appealable order does not deprive it of  
 21 jurisdiction. The parties should treat this case as active and ongoing. The Court’s orders regarding  
 22 the filing of an amended complaint and response [] remain in place[.]”). Otherwise, Plaintiff’s  
 23 improper attempt to appeal a non-final order would undermine judicial economy and delay  
 24 proceedings in this Court even further than her sprawling successive complaints already have.  
 25 **Second**, Plaintiff does not even attempt to argue that she would suffer any “substantial harm or  
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27 <sup>1</sup> On October 24, 2024, Apple filed with the Ninth Circuit a motion to dismiss for lack of appellate  
 28 jurisdiction. *Gjovik v. Apple Inc.*, No. 24-6058, Dkt. 5.1. Under 9th Cir. R. 27-11(a)(1), the filing  
 of the motion to dismiss stays the appellate briefing schedule.

1 prejudice” should the deadline remain unchanged. On the contrary, further delay would only cause  
 2 harm to Apple by further prolonging resolution of this case that has not yet advanced past the  
 3 pleadings in the 13 months since Plaintiff first filed.

4 The Motion to Exceed Page Limitation should also be denied because Plaintiff does not  
 5 provide any rational justification for requesting 200 pages for her 5AC. **First**, the Court already  
 6 made clear, when it first set the 75-page limit, “this is not the kind of case that warrants a complaint  
 7 hundreds of pages in length.” Dkt. 46 at 3. “[E]ven [Plaintiff’s] original complaint – which was  
 8 more than 150 pages [] – failed to comply with Rule 8.” *Id.* Surely, then, a 200-page complaint  
 9 would fail to comply with Rule 8. **Second**, Plaintiff is incorrect that she would need to “retain the  
 10 claims dismissed with prejudice” in the October 1 Order “for the sake of preserving error for later  
 11 appeal.” Dkt. 115 at 3. Controlling authority clearly holds the opposite. *See, e.g., Lacey v. Maricopa*  
 12 *Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (“For claims dismissed with prejudice and without leave  
 13 to amend, we will not require that they be repleaded in a subsequent amended complaint to preserve  
 14 them for appeal.”). **Third**, because Plaintiff need not re-plead the claims that were dismissed with  
 15 prejudice in the October 1 Order, she has ample space to amend the claims that were dismissed with  
 16 leave to amend on the specific grounds the Court permitted. **Fourth**, Plaintiff seeks this relief just  
 17 one week before the deadline to file her 5AC. “I would write a shorter complaint, but I don’t have  
 18 the time,” she appears to argue. To encourage Plaintiff to draft a crisper and clearer amended  
 19 pleading, the Court should deny Plaintiff’s request to expand the page limitation beyond what it  
 20 has already found is the most that could be appropriate in this kind of case.

### 21 **III. CONCLUSION**

22 Apple respectfully requests that the Court deny Plaintiff’s “Emergency Administrative  
 23 Motion” in its entirety.

24 Dated: October 25, 2024

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26 By: /s/ Melinda S. Riechert  
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 28 APPLE INC.